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EXAMINER

ORTIZ, RAFAEL ALFREDO

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL NASH

Appeal 2015-002441¹
Application 12/876,804²
Technology Center 3700

Before MICHELLE R. OSINSKI, PHILIP J. HOFFMANN, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the final rejection of claims 1–17 and 23–26. We have jurisdiction under 35 U.S.C. § 6(b). We held an oral hearing on March 23, 2017.

We REVERSE.

¹ Our decision references Appellant’s Specification (“Spec.,” filed Sept. 7, 2010), Appeal Brief (“Appeal Br.,” filed Aug. 8, 2014), and Reply Brief (“Reply Br.,” filed Dec. 15, 2014), as well as the Examiner’s Answer (“Answer,” mailed Oct. 14, 2014).

² According to Appellant, “[t]he real party in interest . . . is Caged Idea’s LLC.” Appeal Br. 2.

According to Appellant, the invention “relates to personal data transmitting and receiving devices, such as cellular phones, and[,] more particularly[,] to enclosures for [the] same.” Spec. ¶ 1. We reproduce independent claim 1, below, as illustrative of the claims on appeal.³

1. A personal communication device PCD holder comprising:
an at least semi-rigid housing having a base wall and at least one side wall extending from the base wall so as to form a housing into which a user can place a PCD, at least one of the base wall and the at least one side wall including a conductive material so that the at least one of the base wall and the at least one side wall are data signal blocking;

a lid configured to be moveable with respect to the housing so as to enable the user to (i) place the PCD into the housing and (ii) securely and releasably close the lid onto the housing, the lid also including a conductive material so that when the lid is closed onto the housing, the holder is data signal blocking, preventing a data signal from reaching the PCD;

a separate material secured to and extending out from an interfacing edge of one of the housing and the lid so as to extend into the other of the lid and the housing when mated, the separate material (i) structured to have the same shape as an opening formed by the other of the lid and the housing and sized so as to fit snugly within each inner surface forming the opening and (ii) being conductive and data signal blocking, providing additional signal blocking protection between the lid and the housing; and

an illumination source configured to illuminate when the lid is closed onto the housing to indicate the PCD holder is data signal blocking.

³ We correct “{PCD}” to read “PCD” in the claim’s first line.

REJECTIONS AND PRIOR ART⁴

The Examiner rejects claims 1, 3–5, 11–14, 23, and 24 under 35 U.S.C. § 103(a) as unpatentable over Foegelle (US 6,657,214 B1, iss. Dec. 2, 2003) and Ramsey (US 5,594,200, iss. Jan. 14, 1997).

The Examiner rejects claims 2, 9, and 10 under 35 U.S.C. § 103(a) as unpatentable over Foegelle, Ramsey, and McDonagh (US 7,134,552 B1, iss. Nov. 14, 2006).

The Examiner rejects claims 6–8 under 35 U.S.C. § 103(a) as unpatentable over Foegelle, Ramsey, and Diaferia (US 2003/0057131 A1, pub. Mar. 27, 2003).

The Examiner rejects claims 15–17, 25, and 26 under 35 U.S.C. § 103(a) as unpatentable over Foegelle and Wang (US 2005/0029137 A1, pub. Feb. 10, 2005).

ANALYSIS

Rejections of independent claim 1 and its dependent claims 2–14, 23, and 24

Independent claim 1, from which claims 2–14, 23, and 24 depend, recites, among other recitations, “an illumination source configured to illuminate when the lid is closed onto the housing.” Appeal Br., Claims App. Appellant argues that the Examiner errs in finding that Ramsey discloses such an illumination source. *Id.* at 12–13. Based on our review of the record, we agree with Appellant.

⁴ In the Answer, the Examiner withdraws the other obviousness rejections set forth in the Final Office Action. Answer 10.

More specifically, in the rejection, the Examiner finds that “Ramsey discloses an electromagnetic isolation chamber (10) including an illumination source (32) configured to illuminate when the lid is closed into [sic] the housing,” citing Ramsey’s column 3, lines 24–35. Answer 3. However, this portion of Ramsey does not disclose anything about when light 32 illuminates. Ramsey col. 3, ll. 24–35. In the Response to Arguments section of the Answer, the Examiner does not cite any other portion of Ramsey, or any portion of any other reference. Instead, the Examiner determines that

[n]owhere in claim 1 is a recitation indicating the light source [is] automatically turned on when the lid is closed onto the housing. [The] Examiner point[s] out that Ramsey discloses an electromagnetic isolation chamber comprising a lid (12) and a housing (14), the lid including a light source (32) that illuminate[s] inside a chamber when the chamber is under testing/closed, helping the user to view inside the chamber when a device has been tested, wherein the illumination source could manually be turned on and off. The illumination source disclosed by Ramsey is capable [of] illuminat[ing] when the lid is closed onto the housing, as required in claim 1.

Answer 10. We note, however, that claim 1 recites that the “illumination source [is] configured to illuminate when the lid is closed onto the housing.” Appeal Br., Claims App. Thus, even if we agree with the Examiner that “[t]he illumination source disclosed by Ramsey is capable [of] illuminat[ing] when the lid is closed onto the housing” (Answer 10), this evidence is insufficient to support a rejection based on a finding that Ramsey discloses a light source that is configured to illuminate when the housing lid is closed. Thus, based on the foregoing, we do not sustain the rejection of claim 1. We also do not sustain any of the rejections of dependent claims 2–14, 23,

and 24, inasmuch as the Examiner does not establish that any other reference remedies the deficiency in the rejection of claim 1.

Rejection of independent claim 15 and its dependent claims 16, 17, 25, and 26

Independent claim 15, from which claims 16, 17, 25, and 26 depend, recites, among other recitations, “the first housing further including structure that is . . . structured inside the at least one side wall . . . to form-fit to a shape of a particular PCD to inhibit movement of the PCD within the first housing, providing at least one of scratch and impact protection to the PCD.” Appeal Br., Claims App. Appellant argues that the Examiner errs in finding that Foegelle discloses such a structure. *Id.* at 14–16. Based on our review of the record, we agree with Appellant.

The Examiner finds that

Foegelle discloses . . . the first housing further including structure that is sized based upon a size of the PCD and structured/material (126) inside the at least one side wall so as to form-fit to a shape of a particular non-claimed PCD capable to inhibit movement of the PCD within the first housing, providing at least one of scratch and impact protection to the PCD[,]

but does not provide a citation as to where this is taught in Foegelle.

Answer 8. In the Response to Arguments section of the Answer, the “Examiner points out that any cellphone with the exact dimensions of the opened area of housing (102) of Foegelle could be placed within the housing.” *Id.* at 11. While this is indeed correct, this is insufficient to support a rejection based on a finding that Foegelle discloses a housing including a material that is structured to form-fit to a shape of a particular PCD, as recited by claim 15. Further, we determine that Foegelle’s inclusion of additional structure, such as circuit board 116, test antenna 104,

test set 108, clamp assembly 128, alignment post 145, and fasteners prohibits Foegelle from being structured to form-fit to a PCD. *See* Reply Br. 5. Thus, based on the foregoing, we do not sustain the rejection of claim 15. We also do not sustain the rejection of any of dependent claims 16, 17, 25, and 26, inasmuch as the Examiner does not establish that any other reference remedies the deficiency in the rejection of claim 15.

DECISION

We REVERSE the Examiner's obviousness rejections of claims 1–17 and 23–26.

REVERSED